

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3700(c), Oak Mortality Disease Control

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance
the Regulation is Intended to Address

This regulation is intended to address the obligations of the California Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3700 is to provide authority for the State to mitigate the effects of oak mortality disease (sudden oak death) on the agricultural industry, which includes native tree stands, by establishing a program to arrest the artificial spread of the disease to additional areas; thereby protecting California's agricultural industry and environment.

The factual basis for the determination by the Department that amendment of Section 3700(c) is necessary is as follows:

The Department of Food and Agriculture has found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. The Department adopted Section 3700 to implement a program to arrest the artificial spread of the disease. Continued action is necessary to contain and minimize the destructive impact of this pest and disease at the earliest possible time. On April 9, 2004, the Administrator of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS) issued the first emergency order restricting the interstate movement of nursery stock from California nurseries located outside the area regulated under Section 3700. On April 22, 2004, USDA, APHIS issued a new order that replaced that issued on April 9, 2004. On April 23, 2004, USDA, APHIS issued a clarification of its April 22, 2004 order. Through this last federal emergency order and its subsequent clarification, the USDA, APHIS

identified additional plant species as regulated associated articles and as such, these associated articles are prohibited interstate movement from all California nurseries unless properly certified under the provision of the federal emergency order. On April 29, 2004, the USDA, APHIS amended the plant species listed as regulated associated articles. On June 23, 2004, the USDA, APHIS notified all state and territory regulatory officials that it was designating all species, hybrids and cultivars of camellia (*Camellia* spp.) as regulated host plants and *Clintonia andrewsiana* (Andrew's clintonia bead lily), *Dryopteris arguta* (California wood fern), *Smilacina racemosa* (false Solomon's seal) and *Taxus brevifolia* (Pacific yew) as regulated associated articles. As a result, it was immediately necessary to harmonize the State's regulation governing the intrastate movement of nursery stock with the federal emergency order. Therefore, the Department added the hosts and associated articles contained in the two federal emergency orders to the list of articles and commodities covered by Section 3700.

The Department amended this regulation because it was necessary to modify the authority for an established statewide program in order to arrest the artificial spread of the disease to additional areas and harmonize this regulation governing the intrastate movement of nursery stock with the federal emergency order that governs the interstate movement of California nursery stock. The immediate amendment of this regulation was necessary to mitigate the effects of this disease on the agricultural industry, which includes native tree stands. Additionally, it was necessary to immediately harmonize this regulation with the federal emergency order to avoid more stringent federal restrictions being placed against the State to prevent the interstate movement of articles and commodities that may carry *Phytophthora ramorum*. Without the continued implementation of this regulatory action, the USDA, APHIS may consider the entire state as infested with *Phytophthora ramorum*, rather than just the current 13 regulated counties. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California commodities by our international trade partners.

Specific facts and circumstances clearly also indicate that the spread of oak mortality disease presents a clear and imminent danger to property and, therefore, constitutes an emergency. The Department was therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The Department has determined that *Phytophthora ramorum* is a serious forest pest for which control is required to prevent further spread and harm to forests, parks, commercial and urban

landscapes, and watersheds. This disease is known to occur in 13 California counties. Oak mortality disease is serious due to the fact that it kills tanoak, coast live oak, and black oak trees. The pest has been confirmed as infecting Shreve's oak and non-oak species such as rhododendron, huckleberry, bigleaf maple, California buckeye, California coffeeberry, manzanita, and toyon causing foliar and stem disease symptoms.

Therefore, the Department amended Section 3700(c) to add all species, hybrids and cultivars of camellia (*Camellia* spp.) as regulated host plants and *Clintonia andrewsiana* (Andrew's clintonia bead lily), *Dryopteris arguta* (California wood fern), *Smilacina racemosa* (false Solomon's seal) and *Taxus brevifolia* (Pacific yew) to the regulation.

This amendment of Section 3700(c) established that the above-named hosts and associated articles are included as regulated articles and commodities. If the disease is allowed to spread and become established in additional areas, California's agricultural industry will suffer losses due to the death of trees in native stands and ornamental plantings and loss of markets if other states or countries enact quarantines against California products.

To prevent artificial spread of the disease to non-infested areas to protect the California agricultural industry, it was necessary to immediately to establish and enforce restrictions on the movement of these hosts and associated articles as potential carriers that can move this pest from the infested area. Therefore, it was necessary to amend Section 3700(c) on an emergency basis.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3700 does not impose a new mandate on local agencies or school districts. There is an ongoing mandate created by the original adoption of this regulation. However, the amendment of this regulation, adding a new host to the articles and commodities covered, does not impose a new mandate on the local agencies. These local agencies are enforcing an ongoing mandate not impacted by the regulatory action. Additionally, the agricultural commissioners of Alameda, Contra Costa, Humboldt, Lake, Marin, Monterey, Mendocino, Napa, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma counties requested the amendment of this regulation. Therefore, no additional reimbursement is required for Section 3700 under Section 17561 of the Government Code.

The Department has also determined that the amended regulation will involve no additional costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs. The Department of Food and Agriculture has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The existing list of articles and commodities covered under Section 3700(c) is quite extensive and the addition of these hosts through this proposed action does affect, to the Department's knowledge, any new businesses that were not already affected under the previous requirements of Section 3700. If the hosts contained in this proposed action are not added to Section 3700(c), there will likely be a negative impact on the ability of California businesses to compete with businesses in other states due to more stringent federal regulations applying to the interstate movement of the articles and commodities covered.

The agency is not aware of any additional cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the amendment of Section 3700, subsection (c):

E-mail of July 8, 2004 from Nick Condos to Stephen Brown.

"Nurseries Under Sudden Oak Death Compliance, Infested Counties, Updated July 1, 2004, Plant Health and Pest Prevention Services, California Department of Food and Agriculture.

Five page facsimile transmission of June 30, 2004 from Ronnie K. Eaton to Nick Condos.

Facsimile transmission of a letter dated June 30, 2004 to Dr. Dennis E. Mayhew from Steve Hajik.

Letter of June 30, 2004 from David R. Whitmer to Dr. Dennis E. Mayhew.

Facsimile transmission of a letter dated June 30, 2004 to Dr. Dennis E. Mayhew from Stacy K. Carlsen.

Facsimile transmission of a letter dated June 30, 2004 to Dr. Dennis E. Mayhew from Edward P. Myer.

Letter of June 28, 2004 from David W. Moeller to Dr. Dennis E. Mayhew.

Facsimile transmission of a letter dated June 28, 2004 to Dr. Dennis E. Mayhew from John Westoby.

Letter of June 28, 2004 from Gail M. Raabe to Dr. Dennis E. Mayhew.

Letter of June 25, 2004 from David Benston to Dr. Dennis E. Mayhew.

Letter of June 25, 2004 from Greg Van Wassenhove to Dr. Dennis E. Mayhew.

Letter of June 25, 2004 from Susan Cohen to Dr. Dennis E. Mayhew.

Letter of June 25, 2004 from Eric Lauritzen to Dr. Dennis E. Mayhew.

Letter of June 24, 2004 from John E. Falkenstrom to Dr. Dennis E. Mayhew.

E-mail of June 23, 2004 from Jonathan M. Jones to various recipients where the subject line reads, "P ramorum SPRO'S 19 and 20 NEW HOSTS" and its two attached files, PR6-23-04SPRO19.doc and PR6-23-04SPRO20.doc.